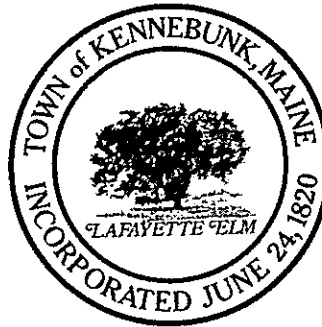


# Town of Kennebunk, Maine



## Planning Board

### MEETING MINUTES

August 22, 2022

In Person Meeting, Town Hall, 3<sup>rd</sup> Floor, 1 Summer Street, Kennebunk

This meeting was held in person and televised on Cable TV Channel 5.  
It is available for public viewing at any time at [TownHallStreams.com](http://TownHallStreams.com).

Present: Chris MacClinchy [Chair], Richard Smith [Vice Chair], David Smith [Secretary], Robert Metcalf [Member], Janice Vance [Member], and Daniel Kiley [Alternate];

Absent: Edward Trainer [Alternate];

Also Attending: Brittany Howard [Town Planner], William O'Connor [Longview Partners], Justin Richardson [Kennebunk, Kennebunkport & Wells Water District], and Craig Burgess [Sebago Technics].

- 1. Call to Order:** Chair and presiding officer C. MacClinchy called the meeting to order at 7:00pm on August 22, 2022. The meeting was held in person and five voting members were present: C. MacClinchy, R. Smith, D. Smith, J. Vance, and R. Metcalf. C. MacClinchy first explained the procedural sequence of the meeting: (1) brief overviews of each application by the Town Planner; (2) comments by the applicants, themselves; (3) Board questions; (4) a public hearing on each item so the public could voice comments and questions; (5) applicants' responses to Board and public remarks; and (6) the Board's concluding comments and action (if any).

## 2. Agenda Items

### a. Public Hearing — Special Exception — 165 High Street — Map 61 Lot 01

B. Howard re-introduced this application from Sylvain Theriault to fill 192 sq. ft. of Priority Three wetlands to access upland for a single-family dwelling. The property is located in

the Branch Brook Aquifer Protection District Zones A & B, Shoreland Overlay District, and Resource Protection District.

Howard reported that the applicant had updated the plan per the Board's request at its last hearing. A memo from the Conservation Commission, she said, had been previously shared with the Board and a memo from Town Engineer Christopher Osterrieder dated August 15, 2022.

William O'Connor, representing the applicant, then addressed the Board, affirming that the applicant's plan had also been amended to show the FEMA Flood Zone. Commenting on the application in general, O'Connor opined that "this is a minor request in terms of wetland alteration...as the hydro-connectivity of the wetland will remain intact."

C. MacClinchy asked the representative to comment on the correspondence received from the Kennebunk, Kennebunkport, & Wells Water District ["KKW"] regarding this project.

O'Connor specifically noted that the delineation of the wetland set forth by KKW shows a much larger wetland area than Longview Partners had found. KKW, he noted, had also expressed concern about the location of the leach field. However, O'Connor stated that the applicants had hired a licensed site evaluator to locate a suitable site for the first-time septic system, which would have 9 to 12 inches of mineral soils above the seasonal high-ground water table. The standard, he said, is only 7 inches by comparison. W. O'Connor then voiced confidence that his firm's assessment of the wetland line was "right on" and accurate based on the site evaluation for the septic.

C. MacClinchy asked if Board members had initial questions, but members agreed to hold their questions until after the public hearing. The Chair then formally opened a public hearing and invited public comments and questions.

Justin Richardson, representing KKW, stated that "this piece of property has been a concern of ours since the Theriaults first proposed to build a house on it". The KKW, Richardson said, had offered to purchase 1.8 acres of the property and also pay for "protective covenants" on the remaining land to protect the integrity of the aquifer and mitigate any impact on the Town's water supply.

KKW, J. Richardson stated, had specifically offered "the going rate for a buildable lot", but had been advised based on the wetland delineation that only a single dwelling could be built on it therefor negotiations stopped.

"Branch Brook is Kennebunk's primary water source," Richardson said, "so protecting it is extremely important."

Richardson explained that Branch Brook is primarily ground-water fed. The "A" and "B" protection zones, he said, had been identified by a computer analysis of the area. But since computer extrapolation is not an exact science, Richardson said, the exact line where the zones begin might be questionable. Hence, "having a house just on the other side of a zone line is reason for concern." There is genuine risk of pollution, Richardson

stated, and particularly so from grass clippings, fertilizers, or pharmaceuticals or if more housing development takes place in the area. However, Richardson was understating of why the wetland delineations may differ given Longview Partners' explanation. He also noted that the location of the proposed home's septic tank was likewise problematic.

Abutters Cheryl Doane and Charles Tucker addressed the Board next, voicing their concerns about this project's wetland intrusion, "deforestation" as "a great many trees have already been marked for removal", increase in the noise level likely to result after cutting down many trees, and negative impacts on water quality and wildlife. The two speakers explained that they had jointly purchased their property in 2017 after carefully ascertaining the building restrictions on neighboring parcels. They decried the risk of waste water possibly leaching into the Town's water supply. They also questioned why a "Special Exception" of any kind was being considered for a property meant to be rigorously protected.

C. Doane and C. Tucker additionally complained that abutters had not been apprised of this project earlier on. No certified notice, they said, had ever been sent to them. C. MacClinchy explained when and how abutters notices are mailed in accordance with the Town's Ordinance and in advance of public hearings. Abutters, he assured the public, had been properly notified.

There being no other public comments, C. MacClinchy kept the public hearing open, but asked the applicants or their representative to respond to these remarks.

W. O'Connor acknowledged that concerns about septic failures were legitimate, but stated that any failure was highly unlikely. He explained the safety features of modern-day septic tanks, describing them as one-piece, water-tight, concrete tanks with a water-tight pump station to move waste water to a leach bed. In this particular case, O'Connor said, the movement of waste water through the wetlands would take place via a [flexible pipe buried underground in a] narrow, 12-inch-wide trench. The leach field, he added, was being designed by certified specialists to "protect public health" and to strictly comply with State of Maine waste disposal rules.

O'Connor also addressed the remarks of Cheryl Doane about excessive tree clearing. "The only trees to be removed," he stated, "would be in the vicinity of the build site and for the driveway."

Manon Cote, wife of the applicant and property owner, spoke next. She countered the concern of Doane and Turner that having another house on the property would facilitate more garbage dumping and water pollution. "By being present on the site," Ms. Cote said, "we'll actually prevent any dumping from taking place."

As for the land deal with KKW, M. Cote stated that it had stalled. "KKW dropped the ball and stopped negotiations with us when they saw that we were building the first house there." She further opined that KKW's assessment of the delineation and extent of the

wetlands “wasn’t right”. “We’ve spent a lot of money to do things properly and... cannot allow this piece of land to just sit there doing nothing.”

D. Riley asked if there were restrictions on tree removals in Zone A of the Branch Brook District. B. Howard affirmed that restrictions do exist. However, Howard reminded the Board that it was meant to focus on the wetland crossing at this hearing. If the applicant’s project is approved by the Planning Board, she said, the applicant’s tree removal plan would be examined by a Code Enforcement Officer as part of the building permit process. Tree removal was not a matter to be taken up by the Planning Board.

J. Richardson re-addressed the Board next, citing Article 8, Section 2.B.4 of Kennebunk’s Ordinance. It prohibits “lot development” on one lot in a protected zone to permit development on an adjacent property. Richardson asked the Planning Board to interpret and explain the restriction in the context of this particular application. B. Howard responded that she had discussed this plan with a Code Enforcement Officer who stated that, in this particular case, the driveway to be built on the adjacent lot was outside the setback from the river.

Richardson then commented on the septic risk. “Septic tanks may not fail, but they can and do overflow,” he said. However, W. O’Connor rebutted that even overflows were “highly unlikely” given the safety features of modern septic tanks.

Board member D. Smith said he had conflicting views about the project. If it goes forward, D. Smith said, the project should have a note in both its deed and plan addressing “the movement of effluent from Lot A to Lot B”. W. O’Connor responded that his group had drafted a note stating that an easement would be needed, but that easement language had not been included in this project’s site plan. O’Connor agreed to add the note to the plan and deed. The easement is for access and maintenance of the field, the field is part of the lot proposed with the new house.

R. Metcalf posed questions about the several surveys and wetland delineations that had been done. M. Cote responded, giving a brief history of the plans that had been carried out since they purchased the land in 2018. R. Metcalf subsequently ventured the opinion that Longview Partner’s delineation was probably the most accurate given their explanation of the plans, their qualifications and professional integrity. “We know the quality of their work,” Metcalf said.

Metcalf also questioned the opinion of the Code Enforcement Officer that a driveway on one lot to reach another lot was not “development”. He concluded that “development” presumably meant “structural development” such as a house or garage or other structure. Town Planner B. Howard affirmed the interpretation.

D. Smith stated that he was not ready to make a ruling as additional information was needed. R. Metcalf agreed with B. Howard that the Planning Board’s charge was to opine on the merit of a Special Exception to cross 192 sq. feet of wetland in order to put in a driveway. It was not, Metcalf re-iterated, the Planning Board’s charge to opine on the number of trees to come down.

R. Metcalf then brought up the state of the property's river embankment. During their site walk, he said, Board members had concerns about the outfall of the proposed culvert and the applicant updated the plan to address this concern. Pesticides, he added, could be restricted. The Water District, he said, could possibly negotiate some easement to periodically monitor the embankment and protect the Brook. But the Planning Board — in his view — was only meant to opine on the Special Exception to fill 192 sq. feet of Priority Three wetlands.

R. Smith asked J. Richardson if the KKW had a definitive position on the project. J. Richardson responded that "as proposed, we are opposed [to it], but definitely willing to help work on potential changes." When asked by R. Smith to clarify the specific kinds of changes KKW would want to see in order to endorse the project, J. Richardson responded that the Water District would at least want to see (1) a change of the location of the new house as it is "pretty close" to Zone A; and (2) a change of the location of the septic field.

R. Smith also asked fellow Board members if they wanted an "updated wetlands survey" as there were divergent opinions about the size and delineation of the wetlands. However, R. Metcalf re-iterated that he was satisfied with Longview Partner's survey and that another one should not be necessary. C. MacClinchy concurred.

John Hersey, a Maguire Road property owner, addressed the Board next, opining that the area has experienced a number of "dry years" which may explain why different surveys measured the wetlands differently. Depending on the year and rainfall, a surveyor could register more or less "wet" land.

J. Vance asked if the applicants intended to sell the second home or reside in it. M. Cote answered that "this is a family project", implying that the second home was for family members only. "If it were me," Vance interjected, "I'd seriously consider the Water District's offer [to purchase a slice of the land]." Vance expressed strong concern about (1) having a leach field in such a vulnerable area, as well (2) the risk of water contamination whatever the probability of a septic leak or failure. Vance concluded that she, too, had mixed feelings about this application.

M. Cote countered that "only part of the driveway will be in the A Zone". As for negotiating again with KKW, "we've been there", M. Cote said. "When it saw our first foundation in the ground, KKW stopped responding to us."

M. Cote stated that, as property owners, she and her family had the right to develop the property providing they meet all of the Town's codes. This plan meets the codes, she said. Cote likewise expressed willingness to amend the deed and plan to prohibit non-organic pesticides. But "if the KKW was so concerned about water contamination", she asked, "why did it stop responding to us?"

The sole issue, M. Cote insisted, is the driveway, which can only be located in the proposed space to keep it as far from the Brook as possible and not further impact the wetlands.

J. Richardson took the podium again to clarify the KKW's position regarding the land purchase. He re-iterated that based on the wetland delineation KKW thought only one house could be built on the property, and therefore stopped negotiations with the property owners.

Cheryl Doane addressed the Board again, alleging that more trees than necessary had been cut down for the first house, resulting in the Town levying a fine on the owners. Would this happen again, Doane asked. W. O'Connor corrected the speaker, observing that the applicants had never been fined for excess tree removal or, indeed, any other breach of code.

C. MacClinchy re-iterated that tree cutting was a matter for the Town's Code Enforcement Officers, not this Board. He again explained when and how abutters are notified and noted out that all the plans for projects before the Planning Board are available on the Town's website. "Our purpose tonight," MacClinchy stated, "is to review an application for wetland fill."

There being no other public comment or question, C. MacClinchy then formally closed the public hearing.

R. Metcalf observed that the plan does not clearly delineate the two lots.

Board members informally agreed that they needed to see another plan with the following changes: (1) delineation of the two lots; (2) a description and location of the easement to permit access to the proposed leach field; and (3) a note in the plan prohibiting the use of non-organic fertilizers and pesticides. J. Richardson affirmed that KKW had permitted the use of organic pesticides — "but not herbicides" — in other instances. Richardson agreed to send the KKW's specific pesticide language to the Town Planner to be shared with the Planning Board and applicants. That language, Board members agreed, should be included in the applicants' next plan.

D. Kiley asked for additional detail about the construction and design of the "trench going across the wetland" that was meant to move effluent from the septic tank to the leach field. It could also fail or seep and result in water contamination, he stated.

W. O'Connor responded that the trench pipe would be a standard, 2-inch effluent line buried four feet below grade and only moving excess waste water. It would be insulated to prevent freezing. It would also be a continuous piece without seams. "The disturbance of the wetland is very low," O'Connor said, "...and the risk of failure with an effluent line is extremely low."

D. Kiley then recommended that maintenance of the effluent pump station should be required "to ensure that the integrity of that line is maintained". W. O'Connor replied that his firm [Longview Partners] would provide the owners with general maintenance language, but would be pleased to add more detail if required.

R. Smith returned to the topic of KKW's adversity to this project. He asked J. Richardson if the Water District would be willing to work with the applicants to develop a plan which

"might be more favorable to the KKW". J. Richardson responded in the affirmative with the caveat that KKW's engineers would need time to look at the plan first.

R. Smith opined that all parties should aim to forge a plan "with which the KKW is comfortable" if at all possible. Protecting water quality, R. Smith said, is of paramount importance as well, he re-affirmed. He urged the owners and KKW to take another look at the plan together.

J. Vance asked W. O'Connor how the owners could be held accountable for the maintenance and periodic cleaning of the septic system being proposed. W. O'Connor responded that his firm would provide the owners with a pumping schedule. However, W. O'Connor said he knew of no formal way for the Town or any other party to enforce such a schedule or enforce any other maintenance requirement.

R. Metcalf stated that he was reluctant to "force KKW and the owners back together again". Nevertheless, Metcalf asked the applicants if they would be willing to voluntarily meet with KKW to discuss their plan and possibly amend it. W. O'Connor responded that timing was an issue. "It's hard to ask these folks [the owners] to wait even longer now for KKW to have its three engineers... become comfortable with the plan," O'Connor stated.

After further discussion, W. O'Connor agreed that he and the owners would be willing to interact with the KKW "if it happens in a timely manner" and if there were a pre-set deadline for KKW's response. C. MacClinchy asked J. Richardson what reasonable amount of time KKW would need to review the plan and respond, and J. Richardson replied "at the end of the week". However, Richardson added that, in any event, KKW would want prohibition of underground fuel or other tanks, prohibition of non-organic pesticides, as well as insertion into the plan and deed of several other [unspecified] conditions if the project were to move forward.

C. MacClinchy stated that a prompt review with KKW would give the applicants time to return to the Planning Board with their revisions. He again asked J. Richardson to forward KKW's "pesticide language" to the Town Planner for dissemination.

C. MacClinchy then stated that there would not be another public hearing of this application unless substantive changes were made to the plan. B. Howard and the Board informally agreed to take up this application again at the Board's September 26, 2022 meeting. Additional abutter notices, Howard said, would not be sent out. Howard encouraged abutters to consult the Town's website for the September 26<sup>th</sup> agenda and to click the "Notify Me" button on the website for notification of posted agendas. Abutters, she added, could also view plan and agenda details approximately one week before the meeting online.

Board members then agreed that they would not mandate the applicants to have a discussion with KKW. It was, they agreed, simply an idea for the applicants to consider.

**b. Public Hearing — Special Exception — Port Road — Map 79 Lot 40**

B. Howard next re-introduced the application of James Logan, Longview Partners, on behalf of property owner Wayne Berry. The owner sought authorization to fill 4,299 sq. ft. of Priority Three wetlands to access upland for a single-family house.

The applicant, Howard reported, had updated the plans per the Board's request at its last hearing. The driveway radii near the proposed structures as well as a note regarding annual inspections of the rock sandwich had been added. The Town Engineer, Howard said, had also reviewed the narrative provided by the applicant and deemed it to be satisfactory. The Conservation Commission had reviewed the plan and raised no objection.

Property owner Wayne Berry then addressed the Board, re-iterating that he had amended the plan in accordance with the Board's past comments. Longview Partners, he said, had provided narrative about the sustainability of the crossing, and Town Engineer C. Osterrieder had reviewed the plan and agreed with Longview's assessment. However, Berry stated that he would be pleased to include a proviso against the use of non-organic pesticides.

D. Smith questioned whether the plan, which currently stipulates that annual inspections would take place, should be revised to state "annual or more frequent inspections as needed". W. Berry responded that he was willing to amend the plan to state that "inspections would take place as necessary and at least annually".

D. Smith likewise opined that there should be no trailers, boats, or other vehicles parked in the Fire Department turnaround area. W. Berry agreed to post signs prohibiting parking there. D. Smith also called for prohibition of non-organic pesticides, and B. Howard read an excerpt from Conservation Commission correspondence urging the same prohibition. However, W. Berry had already agreed to that restriction.

R. Metcalf asked if permits from the Army Corps of Engineers and DEP were in hand, and W. O'Connor said the permits would be supplied to the Town Planner.

C. MacClinchy then formally opened a public hearing and invited public comments and questions. As there were none, MacClinchy subsequently closed the public hearing and the Board proceeded to Findings of Fact.

**Town Of Kennebunk  
Planning Board  
Special Exception  
FINDINGS OF FACT & CONDITONS OF APPROVAL**

1. Property Owner: Wayne Berry
2. Site Location: Port Road in the Suburban Residential District, Rural Conservation District, and Shoreland Overlay District



3. Assessor's Map: 79 Lot: 40 (parent lot)
4. Description of proposed use: Special Exception and Permit to Fill and Grade in the Shoreland Zone – installation of driveway to single family home requiring a 4,299 sq. ft. wetland fill.
5. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 7, Special Exceptions, of the Kennebunk Zoning Ordinance and determined:
- (1) The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:
- (2) The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:
- (3) The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:
- (4) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties;  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:
- (5) The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:
- (6) The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties; and  
Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(7) If located in the Shoreland Area Overlay District, the proposed use:

(a) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(b) will conserve Shoreland vegetation;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(c) will conserve visual points of access to waters as viewed from public facilities;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(d) will conserve actual points of access to waters;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(e) will conserve the town's Open Space Plan priority areas;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(f) will avoid problems associated with flood plain development and use;

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(g) will protect archaeological and historic resources as designated in the comprehensive plan and State Historic Pres. Office; and

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(h) will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.

Met: X Not Met:    Not Applicable:     
with the following conditions or comments:

(8) If located in the Resource Protection District, the following additional standards are met for any residential use proposed:

Met:    Not Met:    Not Applicable: X  
with the following conditions or comments: The property is not located in the Resource Protection District.

(9) If located in the Branch Brook Aquifer Protection District the proposed use: (a) the proposed use meets the specific requirements set forth in this Ordinance and will be in compliance with all applicable state and federal laws; (b) the proposed use will meet all applicable performance standards; (c) the proposed use will not create the risk of bacterial or viral contamination of groundwater in Zone A.; (d) the proposed use does not involve uses or activities which could cause a violation of the performance standard for pollution levels; (e) any control measures proposed to prevent adverse impacts on water quality are adequate and reliable, considering the threat to water quality which would result if control measures failed; (f) the use will not involve disposal of solid waste, hazardous materials or leachable materials (other than specifically allowed by Ordinance); and (g) oil, fuel, and other petroleum products stored on-site will be properly contained so as to prevent contamination of the groundwater from leaks or spills.

Met:  Not Met:  Not Applicable:   
with the following conditions or comments: The property is not located in the Branch Brook Aquifer Protection District.

(10) For Special Exception requests regarding Telecommunications Facilities the Board has considered the following additional issues in making its decision:

Met:  Not Met:  Not Applicable:   
with the following conditions or comments: This project is not for a Telecommunications Facility.

6. The Kennebunk Planning Board has reviewed the above noted proposal utilizing the following set of approval criteria from Article 10, Section 3-G Roads, Driveways and Parking Areas of the Kennebunk Zoning Ordinance and determined:

(1) Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.

Met:  Not Met:  Not Applicable:   
with the following conditions or comments: This is not an existing public road.

(2) New roads and driveways are prohibited in a Resource Protection District, except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

Met:  Not Met:  Not Applicable:   
with the following conditions or comments: The property is not located in the Resource Protection District.

(3) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical:

Met: X Not Met:    Not Applicable:  
with the following conditions or comments:

(4) Road and driveway grades shall be no greater than ten (10) percent, except for short segments of less than two hundred (200) feet.

Met: X Not Met:    Not Applicable:  
with the following conditions or comments:

(5) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip:

Met: X Not Met:    Not Applicable:  
with the following conditions or comments:

(6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient column or heat to erode the road, driveway or ditch.

Met: X Not Met:    Not Applicable:  
with the following conditions or comments:

(7) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis To assure effective functioning.

Met: X Not Met:    Not Applicable:  
with the following conditions or comments:

Based upon the above noted findings, the Kennebunk Planning Board votes the following:

Approves:

Approves with conditions: X (5-0)

- The applicant is to forward copies of the Army Corps and DEP permits to the Town Planner.
- The applicant is to finalize map & lot numbers and address with the Assessing Department.
- Only the use of certified, organic pesticides, herbicides, and fertilizers is permitted.
- There shall be no parking permitted in the Fire Department turnaround area, no vehicles are to be stored or parked in that area, and the area is to be kept clear of snow.

Denies:

APPROVED BY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**\*\*Please note that after planning board approval, the applicant must receive a change of use permit and/or building permit from the building inspector before beginning work at the site.**

A permit granted by the planning board under the provisions of this article (7) shall expire if the work or change involved is not commenced within six (6) months of the date on which the permit is granted, and if the exterior work or change is not substantially completed within one (1) year of the date granted.\*\*

Board members next enumerated their conditions of approval, then entertained the following motion.

**Motion: Move that the Planning Board of the Town of Kennebunk approve the Findings of Fact for the Special Exception, property owner Wayne Berry, site location Port Road in the Suburban Residential District, Rural Conservation District, and Shoreland Overlay District, Assessor's May 79 Lot 40, subject to the following conditions: (1) applicant is to forward copies of the Army Corps and DEP permits to the Town Planner; (2) applicant is to finalize his map & lot numbers and address with the Town's Assessing Department; (3) only the use of certified, organic pesticides, herbicides, and fertilizers is permitted; and (4) no parking shall be permitted in the Fire Department turnaround area, no vehicles are to be stored or parked in that area, and the area is to be kept clear of snow.**

Moved: D. Smith

Second: R. Metcalf

Vote: **Roll call vote, 5 in favor, none opposed; the motion passed.**

**c. Public Hearing – Subdivision Revision – Homes at West Meadow – Mockingbird Lane – Map 93 Lots 161-167 (formerly 117, 153, And 154)**

B. Howard then re-introduced the application of Chinburg Development LLC for a revision of an already approved plan, to include drainage easement to Lots #2 and #3 for the benefit of Lots #1, #2 and #3.

The Planning Board, Howard said, had given preliminary approval at its July 25, 2022 meeting. However, Board members requested additional information regarding the

foundation drains. The Town Engineer, Howard stated, had reviewed the supplemental information subsequently provided by the applicant and deemed the information to be satisfactory.

Chris Burgess of Sebago Technics, the applicant's engineering firm, then addressed the Board, noting that "only minor flow" was anticipated by his group in terms of foundation drainage. This plan, he said, had been updated to include detail about the foundation drain pipe and the rip rap apron to be installed at the outlet.

The Town Engineer, Burgess reported, had recommended an inspection in the spring after the homes are constructed, and the applicant agreed to have that inspection done and to forward the results to the Town Engineer and Town Planner.

D. Smith asked if detail was needed in the plan about the level spreader recommended by the Town Engineer for the rip rap apron, and C. Burgess agreed to so amend the plan.

R. Metcalf asked that the Subdivision plan to be signed by the Board have updated sheets and revision dates of the changes being made. J. Vance inquired whether there was going to be a cover at the end of the foundation drain pipe to prevent clogging or animal entry. C. Burgess replied that "only minimal pipe would be exposed when it comes out of the ground... and it would be covered with stone".

C. MacClinchy thanked C. Burgess for providing the additional drainage detail. The Board then proceeded to Findings of Fact

## **Town of Kennebunk Planning Board**

### **FINDINGS OF FACT AND CONDITIONS OF APPROVAL**

#### **FINAL MINOR SUBDIVISION PLAN OF Homes at West Meadow Revision** Subdivision Name

1. Property Owner: Chinburg Development LCC has shown legal interest in the property (deed).
2. Site Location: Mockingbird Lane
3. Scope of Work: The creation of a drainage easement along lots 2 & 3.
4. Zoning District (s): West Kennebunk Village Residential (WKVR)
5. Assessor's Map: 30 Lot: 161-167
6. Applicant/Representative: Sebago Technics
7. Planning Board Dates:
  - Completeness: 7/25/2022

- Public Hearing: 8/22/2022

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

8. The Kennebunk Planning Board has reviewed the above noted development utilizing the Kennebunk Standards for Reviewing Land Subdivisions and the Kennebunk Zoning Ordinance. Based upon the application and materials submitted in support of the application, together with the evidence submitted at the public hearing on the application, the Planning Board makes the following findings with respect to the standards of Title 30-A § 4404 and Article 11, Section 8 of the Zoning Ordinance Guidelines listed below:

**A. M.R.S.A. 30-A §4404**

1. **Pollution.** Will not result in undue water or air pollution. In making this determination it shall at least consider: The elevation of land above the sea level and its relation to the floodplains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.

Standard is met  X , not met  , n/a  , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_  
 \_\_\_\_\_

2. **Sufficient water.** Has sufficient water available for the reasonably foreseeable needs of the subdivision.

Standard is met  X , not met  , n/a  , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_  
 \_\_\_\_\_

3. **Municipal water supply.** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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4. **Erosion.** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers  
Additional detail of the lip spreader be shown at the outlet of pipe of the foundation drain.

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Rationale for negative determination: \_\_\_\_\_

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5. **Traffic.** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed, and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of the Town, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers:

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Rationale for negative determination: \_\_\_\_\_

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6. **Sewage disposal.** Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on Town services if they are utilized.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers  
Private septic systems will be used.

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Rationale for negative determination: \_\_\_\_\_

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7. **Municipal solid waste disposal.** Will not cause unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

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Rationale for negative determination: \_\_\_\_\_

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8. **Aesthetic, cultural and natural values.** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers



\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

9. **Conformity with local ordinances and plans.** Is in conformance with the duly adopted subdivision regulation, comprehensive plan, and zoning ordinance of the Town of Kennebunk.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

10. **Financial and technical capacity.** The sub divider has adequate financial and technical capacity to meet the standards of these regulations.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

11. **Surface waters; outstanding river segments.** Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, n/a  X , met with following conditions and or waivers

\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

12. **Ground water.** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

13. **Flood areas.** The sub divider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures in the subdivision shall be constructed with their lowest floor, including the basement, at least two feet above the 100-year flood elevation.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, n/a  X , met with following conditions and or waivers  
There are no flood areas on this parcel.

\_\_\_\_\_  
Rationale for negative determination: \_\_\_\_\_  
\_\_\_\_\_

- 
14. **Stormwater.** The proposed subdivision will provide for adequate storm water management.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

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15. **River, stream or brook.** Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

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16. **Freshwater wetlands.** All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

Standard is met  X , not met \_\_\_\_\_, n/a \_\_\_\_\_, met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

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17. **Spaghetti-lots prohibited.** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of these lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, n/a  X , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

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18. **Lake phosphorous concentration.** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

Standard is met \_\_\_\_\_, not met \_\_\_\_\_, n/a  X , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

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19. **Impact on adjoining municipalities.** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Standard is met\_\_\_\_, not met\_\_\_\_, n/a  X , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

20. **Lands subject to liquidation harvesting.** Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, Section 8869, Subsection 14.

Standard is met\_\_\_\_, not met\_\_\_\_, n/a  X , met with following conditions and or waivers

Rationale for negative determination: \_\_\_\_\_

- B. Article 11, Section 8** (As applicable for multi-family and non-residential subdivisions) – **N/A the project is single family subdivision.**

\*\*\* Based on the above noted findings, the Kennebunk Planning Board votes to \_\_\_\_\_ approve,

X  approve with the conditions noted above/below, or

- Update the sheet list table with the correct revision dates.
- Update detail to show level lip spreader per Town Engineers memo.
- A springtime inspection of the discharge area to occur post construction by a professional engineer to ensure the area is properly functioning and does not require any additional measures to properly manage the groundwater being introduced onto the surface. The results of this inspection should be sent to the Town Planner and Town Engineer for review.

\_\_\_\_\_ deny

**The Final Plan Application of**

**Homes at West Meadow - Revision**  
**Subdivision Name**

After the Findings of Fact, Board members informally enumerated their conditions of approval as:

- (1) Update detail to show level lip spreader per Town Engineers memo;
- (2) A springtime inspection of the discharge area to occur post construction by a professional engineer to ensure the area is properly functioning and does not require any additional measures to properly manage the groundwater being introduced onto the surface. The results of this inspection should be sent to the Town Planner and Town Engineer for review.
- (3) Update the sheet list table with the correct revision dates.

Motion: **Move that the Planning Board of the Town of Kennebunk approve the Town of Kennebunk Planning Board Findings of Fact and conditions of approval and plan for the final minor Subdivision plan amendment of “Homes at West Meadow”, property owner Chinburg Development LLC, Mockingbird Lane, with the scope of work [being] the creation of drainage easement along Lots #2 and #3 for the benefit of Lots #1, #2, and #3, in [the] West Kennebunk Village Residential Zoning District, Assessor’s Map 30 Lots 161 through 167, the applicant’s representative [being] Sebago Technics, as conditioned.**

Moved: D. Smith

Second: R. Smith

Vote: **Roll call vote, 5 in favor, none opposed; the motion passed.**

### **3. Approval of Meeting Minutes**

C. MacClinchy then led the Board in a page-by-page review of the Minutes of its meetings of July 25, 2022 and August 8, 2022. Several errors and typos were identified and corrected.

Motion: **Move to approve the Minutes of the meeting of July 25, 2022 as corrected.**

Moved: R. Smith

Second: J. Vance

Vote: **Show of hands vote, 3 in favor [C. MacClinchy, R. Smith, and J. Vance], none opposed, 2 abstentions [D. Smith and R. Metcalf had not attended the July 25<sup>th</sup> meeting]; the motion passed.**

Motion: **Move to approve the Minutes of the meeting of August 8, 2022 as corrected.**

Moved: D. Smith

Second: R. Smith

Vote: **Show of hands vote, 4 in favor, none opposed, 1 abstention [C. MacClinchy had not attended the August 8<sup>th</sup> meeting]; the motion passed.**

### **4. Other Business**

B. Howard reminded the Board that the Town’s “Appreciation Event” to honor volunteers serving on Kennebunk’s boards and committees was taking place on Thursday, August 25, 2022 at 5:30pm at the Waterhouse Center.

### **5. Adjournment:** There being no further business, the Chair adjourned the meeting at 9:22pm.

Motion: **Move that the Planning Board of the Town of Kennebunk adjourn this meeting.**

Moved: D. Smith

Second: R. Smith

Vote: **Show-of-hands vote, 5 votes in favor, none opposed; the motion carried.**

Respectfully submitted by  
J. Schlagheck, Clerk

Adopted by the Planning Board in its Meeting of September 12, 2022

Signed by:   
\_\_\_\_\_  
PLANNING BOARD

